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Supreme Court, U.S.
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No. 04-802

In The Supreme Court of the United States

AMANA COMPANY, L.P. doing business as AMANA APPLIANCES, INC.,

Petitioner,

v.

EDEN ELECTRICAL, LTD.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This case is about a flawed punitive damage review system that enabled a substantial business to recover, in an Iowa diversity case involving the termination of a commercial contract in accordance with its terms, five times the maximum punitive damage award ever before sustained by the Iowa courts. Seeking to deflect attention from this, Respondent Eden Electrical, Ltd. ("Eden") seriously distorts and exaggerates the basis of its recovery. Eden's embellishments are intended to bolster the purported reprehensibility of the actions of Petitioner Amana Company, L.P. ("Amana") under the guideposts established by this Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). Most obviously, Eden pretends that it won below because Amana fraudulently misrepresented that the contract between them was to be "exclusive," "long-term," and "direct." Br. Opp. 3-5.

In fact, the district court disallowed each of these theories as a matter of law before this case reached the jury. The slender legal reed supporting Eden's recovery is the solitary oral statement of an Amana official that Amana was entering into the contract in "good faith," a theory that Eden never pled and objected to at trial. To the extent that Eden complains of misrepresentations other than the oral "good faith" statement, *see, e.g.*, Br. Opp. 4, it asks this Court to accept its punitive award on the basis of conduct unconnected to the legal ground for Amana's liability. *See State Farm*, 538 U.S. at 422-23.

Eden's suggestion in a footnote that Amana's mere act of entering into the distributorship agreement with Eden

was itself an affirmative misrepresentation, Br. Opp. 7 n.6, does not comport with the law of Iowa or anywhere else. Such a theory would convert most ordinary breach of contract cases into fraud cases even where, as here, sophisticated parties agree that the contract can be terminated on short notice for any reason or no reason. Notably, the jury found against Eden on its fraudulent nondisclosure claim.

At bottom, Eden does not, and cannot, contest that the act that allegedly injured it was the termination of a contract consistent with a termination provision – reviewed by Eden's counsel prior to contracting – which permitted Amana to terminate the agreement "at any time for any reason" upon the giving of the required notice.

Eden also exaggerates the effect of Amana's actions. Its business did not "collapse." Br. Opp. 6. To the contrary, the district court found that even after the events depicted in this lawsuit, Eden remained a "large, successful enterprise." App. 33.

REASONS WHY THE WRIT SHOULD BE GRANTED

I. This Case Exemplifies The Current Disarray In Punitive Damages Review.

Eden makes no serious attempt to dispute the central reason why this Court should grant certiorari: The lower courts are in a state of chaos regarding their regulation of punitive damage awards under the constitutional principles this Court set down in *Gore* and *State Farm*. Eden's virtual concession of this state of judicial disobedience and discord is the most telling feature of its Brief in Opposition. Under

the law today there can be little doubt, and Eden does not dispute, that the same punitive damages case can come out very differently depending on which appellate court, or which panel of an appellate court, hears the case.

New examples continue to surface. Since the filing of Amana's instant petition, for example, the Eighth Circuit decided *Boerner v. Brown & Williamson Tobacco Co.*, ___ F.3d ___, 2005 WL 30394 (8th Cir. Jan. 7, 2005), a tobacco wrongful death case in which the Eighth Circuit reduced punitive damages from $15 million to $5 million against a compensatory damages award of slightly over $4 million. As a strident concurrence in that case explained, the Eighth Circuit's constitutional punitive damages analysis in *Boerner* is absolutely irreconcilable with the Eighth Circuit's decision in the instant case below. *Id.*, 2005 WL 30394 at *8-9.

Eden simply asks this Court to assume that lower courts know and apply the law in this area. Br. Opp. 14. But as this Court knows too well, lower courts acting with the best of intentions can still reach widely disparate results. This is particularly true in an area such as punitive damages where facts portrayed as extreme can have an emotional effect on any tribunal. This Court can, does, and should grant certiorari in cases where this Court appears to have settled the law but the application of those precedents by lower courts demonstrates otherwise. *See, e.g., Gonzaga University v. Doe*, 536 U.S. 273, 278 (2002) (granting certiorari where lower courts, applying same decisions of Supreme Court, reached differing conclusions about right to sue under the Family Educational Rights and Privacy Act; "our opinions in this area may not be models of clarity"); *Kumho Tire, Ltd. v. Carmichael*, 526 U.S. 137, 146 (1999) (granting certiorari "in

light of uncertainty among the lower courts" regarding the reach of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)); *New York v. Belton*, 453 U.S. 454, 458 (1981) (granting certiorari regarding search incident to arrest doctrine because "[a]lthough the principle that limits a search incident to a lawful custodial arrest may be stated clearly enough, courts have discovered the principle difficult to apply in specific cases").

Rather than dispute the central premise underlying Amana's petition, Eden instead attacks Amana's proposed rules. Amana first proposes that this Court hold that in cases of substantial compensatory damages, a punitive damage award in excess of the compensatory damages, to be upheld on review, must be supported by a particular judicial finding under each of the three *Gore/State Farm* guideposts and the five subparts of the reprehensibility guidepost – something that was wholly lacking in this case. *State Farm*, 538 U.S. at 418-19.

Apparently unable to develop a principled opposition to this rule, Eden grossly mischaracterizes it as a sea change in the standards used to evaluate the constitutionality of punitive damages awards. Br. Opp. 11, 16. Plainly the proposed rule does no such thing. To the contrary, the rule is simply a procedural mechanism to assure that reviewing courts regularly do what many fail to do now: Consider and apply each part of this Court's *Gore/State Farm* analysis.

Amana's second proposed rule would have the largest previous punitive damage award affirmed by the highest court of a state become the presumptive ceiling for federal punitive damages awards where that state's substantive law forms the basis of recovery. Pet. Cert. 14. Eden's

attack on this rule depends on Eden's mischaracterization of the rule as rigidly binding. Like the first rule, however, this rule is merely a presumption which can be overridden. Presumptions are hardly strangers to constitutional analysis. *See, e.g., Kyllo v. United States*, 533 U.S. 27, 32 (2001) (warrantless searches are presumptively unconstitutional); *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 585 (1983) (differential regulation of the press is presumptively unconstitutional); *Harris v. McRae*, 448 U.S. 297, 312 (1980) (a law which "impinges upon a fundamental right explicitly or implicitly secured by the Constitution . . . is presumptively unconstitutional").

Moreover, using the highest award upheld under federal constitutional principles by a state court of last resort, as the Second Circuit has already done in *Fabri v. United Technologies Intern., Inc.*, 387 F.3d 109 (2nd Cir. 2004), comports with the very function that due process limitations on punitive damages are meant to fulfill: It provides notice to potential tortfeasors of the penalties to which they might be subject for their conduct. *State Farm*, 538 U.S. at 417; *Gore*, 517 U.S. at 574.

II. The Punitive Damages Award In This Case Is Unsupportable Under This Court's Precedents.

Eden lauds the Eighth Circuit for its "in-depth analysis" of the punitive damages issue in this case. Br. Opp. 19. Eden can hardly be reading the same opinion. No amount of majestic characterization can add weight to the dismissive four-paragraph treatment of punitive damages in this $10 million case. App. 5-8.

Far from being a factbound misapplication of established law, the Eighth Circuit's opinion contains a series of legal errors. Among them:

- The Eighth Circuit ignored this Court's plain statement that where "compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee." *State Farm*, 538 U.S. at 425. Here compensatory damages exceeded $2 million.

- The Eighth Circuit ignored the requirement that five different components are to be considered in an evaluation of the reprehensibility of a defendant's conduct. Instead, it focused solely on one reprehensibility factor, trickery and deceit. *Compare State Farm*, 538 U.S. at 419 (citing *Gore*), *with* App. 6-7.

- The Eighth Circuit ignored the third *Gore* guidepost entirely, *i.e.*, the equivalent civil penalties prescribed under state law. *See State Farm*, 538 U.S. at 428 (citing *Gore*). This was a telling omission, since no Iowa punitive statute whatsoever applies to the conduct alleged in this case.[1]

The Eighth Circuit's mishandling of punitive damages here is emblematic of what happens in too many courts: A substitution of lip service to *Gore* and *State Farm* in place of the reviewing court actually *applying* and *following*

[1] Notwithstanding its reference to a citation by Amana's former counsel to a fraud statute in the district court, Eden does not dispute that no Iowa civil or criminal statute, including the statutes cited by the district court, applies to this case. Br. Opp. 20 n.13.

Gore and *State Farm*. It is true, for example, that the Eighth Circuit mentioned the third *Gore* guidepost in a rote listing of the guideposts. App. 5-6. The Eighth Circuit never applied that guidepost to this case, however, notwithstanding Eden's mischaracterization to the contrary. Br. Opp. 9, 20.

The Eighth Circuit's error in this case is made even more clear by its recent decision in *Boerner*. In *Boerner*, a wrongful death case, the plaintiff's decedent suffered "a most painful, lingering death" from lung cancer as a result of using the defendant's cigarettes. As the court explained:

> Pall Mall cigarettes were extremely carcinogenic and extremely addictive – substantially more so than other types of cigarettes; the sale of this defective product occurred repeatedly over the course of many years despite American Tobacco's knowledge that the product was dangerous to the user's health; and American Tobacco actively misled consumers about the health risks associated with smoking.

Nonetheless, in light of the plaintiff's $4,025,000 compensatory damage recovery, the court reduced punitive damages from $15 million to $5 million, concluding that "a ratio of approximately 1:1 would comport with the requirements of due process." *Boerner*, 2005 WL 30394 at *7.

Attempting to reconcile that decision with its earlier decision here, the Eighth Circuit stated that "there is no evidence that anyone at American Tobacco intended to victimize its customers." *Id.* The Eighth Circuit's distinction of *Eden* made no sense, however. *Boerner* involved physical harm, American Tobacco's callous disregard for the health and safety of others, repeated incidents of

wrongful conduct spanning decades, and calculated deceit. As a concurring judge observed, "I find no principled basis for concluding this award is excessive when compared with our affirmance of the punitive damage award in *Eden*." *Id.* at *9.

Boerner illustrates the extent to which the lower courts are spinning new doctrines and rules concerning punitive damage review – and why direction from the Court is so badly needed. In the Eighth Circuit, "intent to victimize" (whatever that means) apparently has become the latest lodestar. It means that a thriving business that entered into a commercial contract and was terminated in accordance with that contract can recover $10 million in punitive damages, while a victim who slowly died of lung cancer is limited to $5 million.

III. There Is Disagreement And Disarray Among The Circuits, Further Necessitating This Court's Review.

If the Eighth Circuit were the only lower court to encounter difficulty in performing a coherent and consistent punitive damage review, this might be a different petition. But the Eighth Circuit is far from alone. As we have demonstrated in the petition, the approaches taken by the different circuits run the gamut. One court treated the applicable civil penalty as the outer limit for punitive damages. *Lincoln v. Case*, 340 F.3d 283 (5th Cir. 2003). Another court, whose decision is not mentioned in Eden's opposition, held that it would be unconstitutional to uphold a larger punitive award than had previously been upheld by the courts of the state whose law was being applied. *Fabri*, *supra*. Still another court reduced a punitive

award to $2,025,000 in order to maintain a 1.5:1 punitive/compensatory ratio in a commercial case involving large compensatory damages. *2660 Woodley Road Joint Venture v. ITT Sheraton Corp.*, 369 F.3d 732 (3rd Cir. 2004). By contrast, the Federal Circuit in *Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 345 F.3d 1366 (Fed. Cir. 2003), held that a $50 million punitive award in a case involving $15 million in actual damages "does not even approach the possible threshold of congressional impropriety" because there was sufficient evidence to support a jury finding that the defendant had "committed actual fraud." *Id.* at 1371-72. In other words, for the Federal Circuit, any actual fraud finding can sustain $50 million in punitive damages, so long as the compensatory damages were substantial.

Eden appears to argue that the lower courts are consistent in their approach because they consistently make reference to *Gore* and *State Farm*. Br. Opp. 22-23. But citation of precedent or a mechanical recitation of guideposts is far different from being bound by that precedent. As the Eighth Circuit did here, too many courts pay lip service to *Gore* and *State Farm* without following the directions this Court gave in those cases. Eden mimics the superficiality of some of these lower courts when it claims that those courts need no "guidance" in this area. Br. Opp. 23.

CONCLUSION

This Court should grant a writ of certiorari and reverse the judgment and decision of the United States Court of Appeals for the Eighth Circuit regarding punitive damages.

Respectfully submitted,

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